

## **REMARKS**

The above Amendments and these Remarks are in reply to the Office Action mailed November 3, 2006. The Applicant thanks the Examiner for extending the courtesy of an interview on February 6, 2007 at 11:30 PM PST. During the interview the Examiner stated that the claims did not delineate the proposed composition. The Applicant has amended Claim 51 incorporating the limitation in original Claim 4. The Applicant has also added independent Claims 72, 74 and 76 wherein the composition has been delineated.

Claims 1-38 and 51-70 were pending in the Application prior to the outstanding Office Action, with claims 1-38 and 58-70 having been withdrawn from consideration. Claims 1-38 are herein cancelled and Claims 39-50 were previously cancelled. The Applicant reserves the right to prosecute withdrawn or cancelled claims in divisional or continuation applications based on the present application. Claims 53-57 are amended. Support for the amendments can be found in original Claim 4. Claims 71-83 have been added. Support for Claims 71-83 can be found in original Claims 1-14.

Claims 51-57 and 71-83 remain for the Examiner's consideration. Reconsideration and withdrawal of the rejections are respectfully requested.

## **CLAIM REJECTIONS UNDER 35 U.S.C. § 112**

Claims 51-57 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner has indicated that the term "extract" renders the claims vague and indefinite. The Applicant respectfully submits that the practice of extracting molecules

from grapes and other berries dates back to 4,000 BC, where a mixture of water and alcohol were used to extract flavors from berries to form wines. The Applicant also submits herewith the Declaration of Dr. Bagchi, a co-inventor of the application, as Appendix A and his resume as Appendix B. Dr. Bagchi has published a number of learned treatises in the field of natural extracts (Bagchi Declaration, ¶5). Dr. Bagchi has given numerous presentations to researchers throughout the world in the field of natural extracts (Bagchi Declaration, ¶6). Dr. Bagchi is a world renowned researcher in the field of natural extracts (Bagchi Declaration, ¶7). Dr. Bagchi declares that a person having ordinary skill in the art would understand that the phrase “an extract of berries” indicates an aqueous alcohol extract (Bagchi Declaration, ¶8).

In view of the above, Applicants respectfully request that the Examiner reconsider and withdraw the 112 rejection.

#### **CLAIM OBJECTIONS**

Claims 54-57 are objected to under 37 CFR 1.75(c), as being of improper independent form for failing to further limit the subject matter of a previous claim.

Claims 54-57 have been amended to place the claims in proper dependent form.

In view of the above, Applicants respectfully request that the Examiner reconsider and withdraw the claim objections.

#### **CLAIM REJECTIONS UNDER 35 U.S.C. § 102**

Claims 51-57 are rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Ochi.

Claim 51 has been amended to better define the composition. The Applicant would like to point out that Ochi recognizes the goal of increasing the antioxidant nature of juices (paragraph [0001], Ochi), he achieves this goal by blending fruit juices with something containing “many phenols which suit juice .... green tea extract ...” (paragraph [0010], Ochi). Ochi gives four examples and in each example either green tea extract rough catechin or rough catechin alone were added to increase the antioxidant activity.

Further, Ochi does not disclose “two or more berry extracts selected from the group consisting of blueberry extract, bilberry extract, cranberry extract, elderberry extract, raspberry extract and strawberry extract”. Thus Ochi does not disclose every limitation of claim 51. In contrast, the Applicants have unexpectedly discovered that by blending together specific berry extracts the resulting mixture has an antioxidant level that exceeds the sum of the individual components antioxidant levels. The Applicant emphasizes that this is not the invention of Ochi, who states “[e]specially the high juice of palatability with good flavor is not proposed” (paragraph [0004], Ochi).

Claims 52-56 all depend indirectly or directly from independent Claim 51 and are therefore believed patentable for at least the same reasons as the independent Claim 51 and because of the additional limitations of these claims.

In view of the above, Applicants respectfully request that the Examiner reconsider and withdraw the 102(b) rejection.

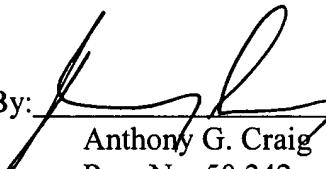
## CONCLUSION

In light of the above, it is respectfully requested that all outstanding rejections be reconsidered and withdrawn. The Examiner is respectfully requested to telephone the undersigned if he can assist in any way in expediting issuance of a patent.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this reply, including any fee for extension of time, which may be required.

Respectfully submitted,

Date: 2/13/07

By:   
Anthony G. Craig  
Reg. No. 50,342

FLIESLER MEYER LLP  
650 California Street, 14<sup>th</sup> Floor  
San Francisco, CA 94108  
Telephone: (415) 362-3800  
Facsimile: (415) 362-2928  
Customer No. 23910